SERVED: June 25, 2003

NTSB Order No. EA-5044

## UNITED STATES OF AMERICA NATIONAL TRANSPORTATION SAFETY BOARD WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD at its office in Washington, D.C. on the 24th day of June, 2003

In the Matter of

SEAN D. WAMPOLE,

)

Appellant.

Docket NA-40RM

## OPINION AND ORDER

The respondent challenges the law judge's determination that his appeal from an order of the Administrator revoking his airline transport pilot certificate was untimely. Although the law judge concluded that service of the revocation order by mail had not reached respondent because of reported changes in his mailing address, he found, based solely on written submissions of the parties, that the respondent had failed to take a timely appeal after he subsequently received personal service of the order during a visit, for unrelated reasons, to a Federal Aviation Administration office.

Because we were reluctant to affirm the finding of personal service in the face of the contradictory documentary accounts about what had transpired during that visit, the Board in Order No. EA-4985 (2002) remanded the case to the law judge to conduct a hearing for the limited purpose of resolving the parties' conflicting statements as to whether the respondent in fact received a copy of the Administrator's order while he was there.

At a hearing convened on October 17, 2002, a different law judge heard testimony from the respondent and witnesses sponsored by the Administrator. In a decision issued on the record on that date, the law judge concluded as follows:

In summary . . . upon an evaluation of the evidence, and making determinations as to credibility, I find that the preponderance of the reliable and credible evidence preponderates in favor of the Complainant, and I specifically find that on October 3, 2001, Respondent was served with a copy of the Administrator's Emergency Order of Revocation . . . (Transcript at 114).

In light of that conclusion, no reason appears for not sustaining the original law judge's decision that the appeal respondent filed on November 6, 2001, should not be accepted, as it was filed beyond the time limits applicable to either an emergency (10 days) or a non-emergency appeal (20 days) under our rules of practice.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup>An excerpt from the hearing transcript containing the law judge's decisional order is attached.

<sup>&</sup>lt;sup>2</sup>Our remand order reflected our agreement with the law judge that the respondent had not demonstrated good cause for extending his time to file an appeal from the revocation order.

## ACCORDINGLY, IT IS ORDERED THAT:

- 1. The respondent's appeal is denied; and
- 2. The December 14, 2001 decision of the law judge

rejecting respondent's appeal for untimeliness is affirmed.

ENGLEMAN, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.